

SERVICE DATE - AUGUST 6, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 591X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN CLARK AND FLOYD COUNTIES, IN

Decided: August 6, 2004

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 3.8-mile line of railroad between milepost B-50.5 near Clarksville and milepost B-54.3 near New Albany, in Clark and Floyd Counties, IN.¹ On August 7, 2001, a decision and notice of interim trail use or abandonment (NITU) was served reopening the proceeding and authorizing a 180-day period for the Civil Town of Clarksville, IN, the City of New Albany, IN, and the City of Jeffersonville, IN (collectively Proponents) to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding.² At the request of CSXT, the negotiating period under the NITU was extended several times; the latest extension served on February 3, 2004, extending the negotiation period until August 4, 2004. The February 3, 2004 decision also extended the deadline for CSXT to file its notice of consummation until October 4, 2004.

On August 4, 2004, CSXT filed a request to extend the NITU negotiation period until February 4, 2005. CSXT states that it has been unable to finalize negotiations with Proponents. Additionally, CSXT requests an extension of the consummation notice filing deadline until April 4, 2005.

Even if a negotiation period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 64, 659 (8th Cir. 1996) cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU

¹ Notice of the exemption was served and published in the Federal Register on July 9, 2001 (66 FR 35826-27).

² The August 7, 2001 decision also imposed several environmental conditions.

negotiating period will be extended to February 4, 2005,³ and the consummation notice filing deadline will be extended to April 4, 2005.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CSXT's request to extend the NITU negotiating period and its request for an extension of time to exercise the abandonment authority is granted.
2. The negotiating period under the NITU is extended to February 4, 2005.
3. The authority to abandon must be exercised on or before April 4, 2005.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

³ Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company—Abandonment Exemption—In Jackson, Victoria and Wharton Counties, TX, Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).